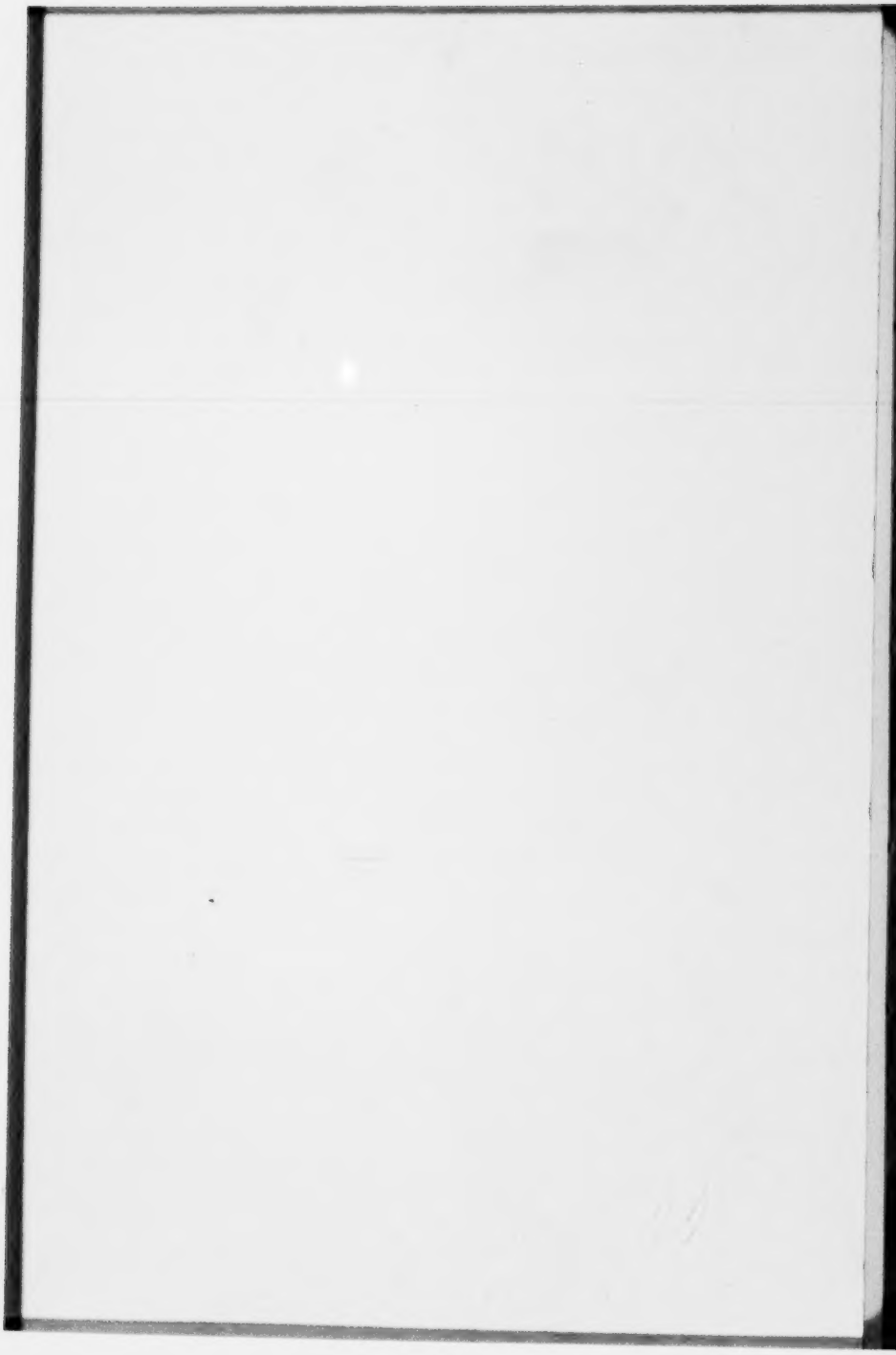

12

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942

Nos. 642 and 643

IN THE MATTER OF 4145 BROADWAY HOTEL COMPANY, A CORPORATION,

Debtor

(C.C.A. Case No. 7888)

F. GERALD THOMAS,

Petitioner

vs.

THE UNITED STATES OF AMERICA,

Respondent

(C.C.A. Case No. 7891)

F. GERALD THOMAS,

Petitioner

vs.

GEORGE W. ROSSETTER, JAY C. McCORD AND MAURICE A. ROSENTHAL, STOCK TRUSTEES,

Respondents

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

MOTION OF CHICAGO CIVIL LIBERTIES COMMITTEE

To be heard Amicus Curiae in support of Petition for Certiorari.

CHARLES LIEBMAN,
Counsel for Chicago Civil Liberties Committee.

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On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

MOTION OF CHICAGO CIVIL LIBERTIES COMMITTEE FOR LEAVE AS AMICUS CURIAE TO SUPPORT THE PETITION FOR WRIT OF CERTIORARI FILED BY F. GERALD THOMAS.

The Chicago Civil Liberties Committee, by Charles Liebman, its attorney, moves for leave to be heard herein as *amicus curiae* in support of the petition for writ of certiorari. The interest of the Chicago Civil Liberties

Committee in this matter, and the reasons for which it requests the Court to grant certiorari herein are as follows:

I.

1. The Chicago Civil Liberties Committee is an Illinois not-for-profit corporation, organized for and interested in the protection of civil rights, including the rights of uninhibited dissemination of information and opinion as guaranteed by the First and Fourteenth Amendments to the Constitution.

2. The petitioner for certiorari has been sentenced to imprisonment for a contempt of court consisting of a violation of an injunction restraining him from communicating information and opinion to other persons.

3. The gravamen of his offense as stated in the order imposing the punishment (Trans. 7888, pages 46-47) is that he wilfully, deliberately and defiantly *disobeyed the injunction order* (Trans. 7888, page 46, par. 2).

4. The order for punishment refers to findings of fact and conclusions of law previously made, but does not specify which findings of fact and conclusions of law (Trans. 7888, pages 15-27), constituted the contempt or how they constituted a contempt.

II.

5. Traditionally, the struggle for freedom of speech has been primarily a struggle against prior limitation upon the right to publish, enforced by punishment not for the evil inherent in the publication itself, but for the violation of the prohibition against publication. The balancing of social conveniences as between the inhibition of potentially harmful publication on the one side, and the general desirability of free interchange of opinion and

information on the other hand (subject to punitive sanctions after the fact, if the expression of opinion or information violates some positive rule of law), has invariably led temperate and thoughtful men to choose the latter alternative. The inhibitory sanction has universally been used as a cloak for oppression, and as a device for maintaining injustices and for forestalling corrective action.

6. The use of the injunctive process against communication between persons desiring to exchange information and opinion about their pecuniary interests in property which is involved in litigation appears to have been invented in connection with bankruptcy reorganization jurisdiction created by the various Bankruptcy Reorganization Statutes of 1933 and subsequently. The theory of the injunction against communication derives from that school of thought which assumed that the bankruptcy reorganization jurisdiction was "revolutionary", in the sense that basic principles of fair play which had previously governed in the determination of the relation of conflicting interests, were swept aside. The outstanding example of this concept was the position universally assumed by the District Courts, and by many of the Circuit Courts of Appeal, that the principles of the *Boyd* case (*Northern Pacific Ry. Co. v. Boyd*, 228 U. S. 482, 33 S. Ct. 554) had been nullified by the reorganization statutes, and that in a bankruptcy reorganization secured creditors might have their security taken away from them and turned over in part to junior interests, without consideration or compensation. This concept was not destroyed by this Court until 1939 when in *Case* v. *Los Angeles Lumber Products Co*, 307 U. S. 619, 59 S. Ct. 1030, the Court held in effect that the principles of the *Boyd* case involved fundamental due process and governed in all bankruptcy reorganizations.

7. The possibilities of the use of the injunctive process as a means of oppression and overreaching have been so well illustrated in the labor injunction cases that it seems hardly necessary to expand further on this point. We point out that even if the injunctive process be allowed, only those acts ought to be subject to injunction which would in themselves amount to contempts of court in the absence of injunction. This being the case, the injunction process becomes superfluous; considering its unsavory background and the inherent probability of abuse, it ought not to be sanctioned. So far as the dissemination of information and opinion is concerned, there seems to us to be no substantial difference between the respective positions of (1) bondholders attempting to communicate between themselves concerning their rights; (2) labor union organizations attempting to communicate with potential labor union members to induce them to join unions; (3) union members seeking to inform the public that they have a grievance against an employer, and (4) members of a religious sect seeking to make proselytes by oral argument by handing out their literature. In situations (2), (3) and (4) this Court has recognized that the due process clause of the Fourteenth Amendment embraces the First Amendment, as against inhibitory action by the States. In the case at bar, the First Amendment ought to bar the right of a United States court by injunctive process to prohibit the dissemination of information and opinion; and then to punish for such dissemination as it has in the instant case, not for any inherent vice or criminality in the information and opinion transmitted, but for a contempt of court which arises solely out of the disobedience of the injunction order.

III.

CONCLUSION.

The Chicago Civil Liberties Committee submits that the question of the right of a court to restrain dissemination of information and opinion by injunction; the question, if such right exists, of the proper scope of the injunction, of the nature of the acts which may constitute violations of such an injunction, and of the nature of the punishment to be imposed, are of such widespread importance that this Court, as a court of law, ought to take this case on certiorari, examine the questions involved and lay down principles for the guidance of the inferior courts in regard to such matters in the future.

Respectfully submitted,

CHARLES LIEBMAN,
Attorney for Chicago Civil Liberties Committee.